

Energy Employees Occupational Illness Compensation Amendments of 2001
Section-by-Section Analysis

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

This section contains the short title and Table of Contents of the bill.

SECTION 2. FINDINGS

This section sets forth the findings of the bill.

Title I—Compensation Program

SECTION 101. APPROPRIATIONS AND COMPENSATION FUND

Subsection (a) would amend section 3614 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) to authorize appropriation of the sums necessary to administer the program and appropriate the sums necessary to make compensation payments. Those funds would be available until expended.

Subsection (b) would amend section 3612 of EEOICPA to eliminate transfer authority for the compensation fund and eliminate a requirement for amounts in the compensation fund to be invested and interest from the investment being deposited into the fund.

SECTION 102. EXPOSURE IN THE PERFORMANCE OF DUTY

Subsection (a) of this section would amend section 3623(a) of EEOICPA to provide that the presumption that a current or former employee of a beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, who was employed during a period when the vendor was engaged in activities related to the production or processing of beryllium for sale to, or use by, the Department of Energy was exposed to beryllium in the performance of duty for purposes of the program can be overcome only by substantial evidence that such an employee was never exposed to dust, particles, or vapor of beryllium that was produced or processed for sale to, or use by, the Department of Energy.

Subsection (b) would amend section 3623(d) of EEOICPA to specify that the Secretary of Health and Human Services, after consultation with the Secretary of Energy, is to establish methods for arriving at reasonable estimates of radiation doses received by the types of employees covered by the program.

SECTION 103. DESIGNATION OF ADDITIONAL MEMBERS OF SPECIAL EXPOSURE COHORT

This section would amend section 3626 to specify that the Secretary of Health and Human Services will determine who will be new members of the Special Exposure Cohort.

SECTION 104. COMPENSATION PROGRAM

This section would make several changes to subtitle B of EEOICPA.

Subsection (a) would amend section 3628 of EEOICPA to provide that a covered employee could receive payment, as Federal employees receive payments under the Federal Employees' Compensation Act, for the employee's wages lost after the effective date of the amendments because of disability or death if the employee meets certain requirements. The employee also would be eligible for payment of medical expenses incurred after the effective date and for vocational rehabilitation services undertaken at the Secretary of Labor's direction.

Subsection (b) would amend section 3629 of EEOICPA to provide circumstances under which the employee or employee's survivor could elect to receive payment of a lump sum of \$150,000 and medical benefits instead of any other compensation under this Act.

Subsection (c) would add sections 3632 through 3636 to EEOICPA:

- New section 3632 would provide for the manner of submitting claims for compensation to the Secretary of Labor and set time limitations for submitting claims.
- New section 3633 would establish the procedure for initial screening of a claim by the Secretary of Labor and calculation of an employee's radiation dose by the Secretary of Health and Human Services. This new section also would set forth methods for obtaining review of the initial screening and obtaining reconsideration and administrative review of the calculation.
- New section 3634 would establish procedures for the Secretary of Labor to follow in awarding compensation under EEOICPA. This new section also sets forth criteria for obtaining reconsideration of the Secretary of Labor's determinations concerning an award.
- New section 3635 would establish an Energy Employees Review Panel in the executive branch to review a radiation dose estimate calculation by the Secretary of Health and Human Services and final decision of the Secretary of Labor in making determinations and awards with respect to claims filed under EEOICPA.
- New section 3636 would list issues subject to judicial review, establish procedures and standards for judicial review, and preclude review of issues not specifically listed.

SECTION 105. GENERAL PROVISIONS

This section would amend subtitle C of EEOICPA.

- New section 3641 would provide that any compensation or benefits allowed, paid, or provided under EEOICPA: (1) be considered as paid under a workers' compensation law for the purposes of exclusion from gross income and wages under sections 104(a)(1), 3121(a)(2), and 3306(b)(2) of the Internal Revenue Code; (2) not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of those benefits; (3) not be subject to offset under chapter 37 of title 31, United States Code; (4) not be considered as either a form of compensation or as reimbursement for a loss that would make the individual who receives the compensation liable to repay an insurance carrier for insurance payments; and (5) not be treated as affecting any claim against an insurance carrier with respect to insurance. In addition, this section would provide that claims not be assigned or attached. Moreover, if a federal employee found to be disabled under EEOICPA resumes employment with the federal government, the employee would be entitled to the rights set forth in section 8151 of title 5, United States Code.
- New section 3642 would set forth circumstances under which convicted felons and their dependents would forfeit compensation under EEOICPA.
- New section 3643 would establish limitations on the right to receive benefits under EEOICPA.
- New section 3644 would provide for the coordination of benefits under state workers' compensation programs and benefits under EEOICPA. An individual must elect to receive either state workers' compensation benefits or compensation under EEOICPA. When workers' compensation benefits have been secured by a private insurance carrier, the Secretary of Labor may waive the election and enable the claimant to obtain more of his or her recovery under the state system.
- New section 3645 would provide for the coordination of benefits under federal workers' compensation system and benefits under EEOICPA. An individual must elect to receive either Federal Employees' Compensation Act benefits or compensation under EEOICPA.
- New section 3646 would require an individual to elect which benefits to receive if the individual is entitled to receive both compensation under EEOICPA for an illness or death of a covered employee and also benefits (except proceeds of an insurance policy) from the United States for the same illness or death under another statute whose benefits are provided because the employee served as an employee or a member of the armed forces.
- New section 3647 would provide that, except to the extent specified in section 3630, an individual may not receive compensation under EEOICPA for cancer and also receive compensation under the Radiation Exposure Compensation Act as a result of the same cancer.

- New section 3648 would make minor stylistic changes to section 3644 of EEOICPA, which provides that the only method for recovering from the United States or a Department of Energy contractor for a condition covered by EEOICPA would be under EEOICPA. An individual would not be able to recover from the United States or a Department of Energy contractor through a lawsuit.
- New section 3649(a) would make minor stylistic changes to section 3643 of EEOICPA, which provides that the acceptance by an individual of payment of compensation under EEOICPA with respect to a covered employee shall be in full satisfaction of all claims of or on behalf of that individual against the United States, a Department of Energy contractor or subcontractor, a beryllium vendor, an atomic weapons employer, or any person with respect to that entity or person's performance of a contract with the United States that arises out of the same harmful exposure. A new subsection (b) provides that subsection (a) does not apply to an administrative or judicial proceeding under a State or Federal workers' compensation statute. The amendment of subtitle C of EEOICPA would eliminate section 3645 of EEOICPA, which provides for election of remedy for beryllium employees and atomic weapons employees under certain conditions.
- New section 3650 would subrogate the United States to a claim that an individual who receives compensation under EEOICPA may have against a person other than the United States for the illness or death for which the compensation was received. In addition, for the purposes of this Act, the provision in section 8131 of title 5, United States Code, that provides that an employee who is required to appear as a party or witness in the prosecution of an action described in that section is in an active duty status while so engaged, applies only to a Federal employee.
- New section 3651 would provide that: (1) references in EEOICPA to a provision of another statute will be considered as references to that provision, as amended and as may be amended from time to time and (2) in applying a provision of chapter 81 of title 5, United States Code (except section 8101) under EEOICPA, the term "employee" in the provision means a covered employee and the term "Employees Compensation Fund" means the "Energy Employees Occupational Illness Compensation Fund."

Title II—Technical and Conforming Amendments

SECTION 201. CONFORMING AMENDMENTS

Subsection (a) would amend section 3611(a) of EEOICPA to eliminate a sentence requiring the President to carry out the compensation program through a federal agency. Other amendments assign particular agencies responsibility for carrying out various parts of the program.

Subsection (b) would delete subsection 3611(c) of EEOICPA, eliminating an unnecessary

provision concerning legislative modification of EEOICPA.

Subsection (c) would amend section 3621(7) to strike a redundant phrase in the definition of “covered beryllium employee.”

Subsection (d) would amend section 3621(8) to permit the Secretary of Health and Human Services to provide another method for determining whether an employee has beryllium sensitivity besides the one specified in the section.

Subsection (e) would delete an unnecessary word from section 3621(8), the definition of “covered beryllium illness.”

Subsection (f) would amend section 3621(9)(B) to simplify the wording of the definition of “covered employee with cancer.”

Subsection (g) would amend section 3621(13) to eliminate an unnecessary word and permit the Secretary of Health and Human Services to provide another method for determining whether an employee has chronic beryllium disease.

Subsection (h) would amend section 3621(14)(A) to clarify that an employee can meet the 250-day requirement by working in more than one gaseous diffusion plant.

Subsection (i) would amend section 3621 (14)(C) to assign to the Secretary of Health and Human Services certain duties related to the Special Exposure Cohort.

Subsection (j) would amend section 3621 to delete the definition of “occupational illness” because the definition no longer is necessary in the amended EEOICPA.

Subsection (k) would redesignate the last paragraphs in section 3621 and add new paragraphs containing definitions that would: (1) clarify that terms defined in certain sections of the Federal Employees Compensation Act have the meaning given those terms in that statute when used in EEOICPA and (2) define “time of injury,” “toxic illness,” “toxic substance,” and “compensation.”

Subsection (l) would amend section 3622 of EEOICPA to allow the Secretary of Energy to designate an entity as an atomic weapons employer and the Secretary of Health and Human Services, in consultation with the Secretary of Energy, to specify additional means of establishing the existence of a covered beryllium illness.

Subsection (m) would amend section 3623(b) of EEOICPA to simplify the language regarding exposure in performance of duty in relation to contracting cancer.

Subsection (n) would amend section 3623(c)(1) of EEOICPA to make the Secretary of Health

and Human Services, after consultation with the Secretary of Energy, responsible for establishing guidelines for making determinations concerning whether cancer was sustained in the performance of duty.

Subsection (o) would amend section 3623(e) of EEOICPA to strike a requirement that the Secretary of Energy make available to an employee with cancer the estimated radiation dose of the employee. The Secretary of Health and Human Services is required to make the dose available by another amendment.

Subsection (p) would amend section 3624(b) of EEOICPA to require the Advisory Board on Radiation and Worker Health to advise the President concerning whether EEOICPA should be amended to provide benefits for chronic renal disease.

Subsection (q) would amend section 3627(e)(2)(A) of EEOICPA to substitute “pneumoconioses of category 1/0 or higher” for “pneumoconioses of category 1/1 or higher.”

Subsection (r) would amend section 3627 of EEOICPA to provide that claimants seeking benefits under EEOICPA for chronic silicosis be reimbursed from the compensation fund for reasonable diagnostic medical expenses incurred in establishing their claims.

Subsection (s) would amend section 3630 of EEOICPA to clarify procedures for payment of an additional \$50,000 to persons compensated under the Radiation Exposure Compensation Act.

Subsection (t) would amend section 3631 of EEOICPA to specify agencies which are to perform particular actions under EEOICPA.

Subsection (u) would amend section 3661(d) of EEOICPA to give the Secretary of Energy more responsibility for the physician panels used in the program that provides assistance to workers with State workers’ compensation claims.

SECTION 202. TECHNICAL AMENDMENTS

Subsections (a), (b), and (c) make changes to other Acts necessitated by the amendments to EEOICPA.

Subsection (d) adds a new Office of Workers’ Compensation Advocate to the Department of Energy to support implementation of EEOICPA.

SECTION 203. AMENDMENT TO THE RADIATION EXPOSURE COMPENSATION ACT

This section would appropriate the sums necessary to carry out the Radiation Exposure Compensation Act.

SECTION 204. EFFECTIVE DATE

This section provides that the effective date of the Act is the later of July 31, 2001, or the date of its enactment.